

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:MSR:AOK:OKL:TL-N-4390-00  
CGMcLoughlin

date: AUG 23 2000

to: Chief, Examination Division, Arkansas-Oklahoma District  
Attn: Leola Casey

from: District Counsel, Arkansas-Oklahoma District, Oklahoma City

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subject: Request for Advisory Opinion

Taxpayer: [REDACTED]

Taxable year: [REDACTED]

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

DISCUSSION

a. Facts

We are responding to your July 26, 2000, memorandum in which you sought our views on the application of the I.R.C. § 6404(e)(2) interest abatement rules to a erroneous refund of \$ [REDACTED]. The erroneous refund pertains to the taxable year [REDACTED]. In [REDACTED], the taxpayer filed a petition with the Tax Court contesting certain adjustments covering the [REDACTED] and [REDACTED] taxable

years. Following a trial on the merits, the Tax Court entered a decision determining an overpayment of \$ [REDACTED] for the [REDACTED] taxable year.

The \$ [REDACTED] overpayment consisted of a \$ [REDACTED] reduction in the taxpayer's tax liability for [REDACTED] and a \$ [REDACTED] advance payment of tax made on [REDACTED]. Due to a mistake in processing the decision, the taxpayer received \$ [REDACTED] plus interest instead of the \$ [REDACTED] plus interest provided for in the decision. The \$ [REDACTED] error was caused by treating the entire \$ [REDACTED] overpayment as a reduction in tax. The error had the effect of reducing the taxpayer's tax liability for [REDACTED] by an additional \$ [REDACTED] and generating an excessive refund of \$ [REDACTED].

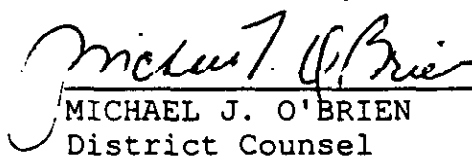
The erroneous refund was paid on [REDACTED]. The government was unaware of the erroneous refund until [REDACTED], when the taxpayer filed a foreign tax credit carryback claim. While examining the refund claim, the government discovered the error. The government and the taxpayer are in agreement that an erroneous refund occurred. The taxpayer acknowledges that the erroneous refund should be repaid. But, the taxpayer refuses to pay interest on the erroneous refund from [REDACTED], the date of the government's erroneous refund payment. The taxpayer asserts that the interest should be abated under I.R.C. § 6404(e)(2).

b. Analysis

I.R.C. § 6404(e)(2) requires the government to abate interest assessments on erroneous refunds unless (1) the taxpayer caused the erroneous refund or (2) the erroneous refund exceeds \$50,000. The erroneous refund in this case clearly exceeds the \$50,000 threshold for abatement of interest. See United States v. Egypt Planting Co., 92-2 U.S.T.C. ¶ 50,603, 70 A.F.T.R.2d 5724 (N.D. Miss. 1992) (no abatement of interest on \$65,633.73 erroneous refund despite taxpayer's repayment of \$32,159.05). Consequently, the taxpayer is liable to pay interest on the erroneous refund.

In this case, we recommend that you communicate our conclusions to the taxpayer and request payment of the erroneous refund plus interest. If the taxpayer still refuses to pay the erroneous refund or interest thereon, we suggest a suit recommendation be prepared and submitted to us at your earliest convenience. The statute of limitations for bringing an action for a nonrebate erroneous refund, like the one at issue here, is two years from the refund date. I.R.C. §§ 6532(b), 7405(d). Here, the statute of limitations will expire on May 10, [REDACTED].

Please contact Glenn McLoughlin at (405) 297-4803 if you have any questions.

  
MICHAEL J. O'BRIEN  
District Counsel

cc: ARC (TL), Midstates Region  
ARC (LC), Midstates Region